(15,495.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1111.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

MARY G. BROWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

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1 Circuit Court of the United States, Eastern Division, Western District of Tennessee.

MARY G. BROWN
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

Transcript of the Circuit Court of Madison Co., Tenn. Filed in U. S. Cir. Ct., W. D. T., Octo. 23d, 1893.

STATE OF TENNESSEE, }
Madison County. }

Be it remembered that — a circuit court of the 11th judicial circuit, began and held in and for the said county of Madison, at the court-house, in Jackson, Tennessee, on the 3d Monday in September, 1893, it being the 18th day of same month, and of American Independence the 118th—present and presiding, Hon. L. S. Woods, judge—when the following proceedings were had, to wit:

Summons.

Issued 5th day of October, 1892. J. D. Newton, clerk.

The State of Tennessee to the sheriff of Madison county, Greeting:

You are hereby commanded to summons the Illinois Central Railroad Company, if to be found in your county, to appear
2 before the judges of our circuit court, to be held for the county of Madison, at the court-house, in the town of Jackson, on the 2d Monday in January next, then and there to answer Mary Brown in an action, to her damage twenty thousand dollars.

Herein fail not, and have you then and there this writ.

Witness J. D. Newton, clerk of our said court, at office, the 3d Monday in September, A. D. 1892.

J. D. NEWTON, *Clerk.*

Pauper's Oath.

STATE OF TENNESSEE, }
Madison County. }

I, Mary Graves Brown, solemnly swear that, owing to my poverty, I am not able to bear the expense of the action which I am about to commence, and that I am justly entitled to the redress sought, to the best of my ability.

MARY GRAVES BROWN.

Sworn to and e'c't this September 29th, 1892.

J. D. NEWTON, *Clerk.*

Officer's Return.

Came to hand same day as issued, and executed as within
3 commanded, summoning W. F. Shafner, agent I. C. R. R. Co., this October 5th, 1892.

B. F. YOUNG, *Sheriff.*

Declaration.

Filed July 8th, 1893. J. D. Newton, clerk.

In the Circuit Court of Madison County, May Term, 1893.

MARY G. BROWN
vs.
THE ILLINOIS CENTRAL R. R. Co.

The plaintiff sues the defendant, a corporation owning and operating a line of railroad extending from New Orleans, in the State of Louisiana, to Chicago, in the State of Illinois, passing through the State of Kentucky and other States:

For that whereas said defendant heretofore, to wit, on the 29th day of July, 1892, was possessed of a short branch or line of railroad leading off from its main line at or near Bardwell, in the State of Kentucky, and extending and running out a few miles to a point or terminus known as the "gravel pits," also owned and possessed by said defendant, and with a yard appurtenant thereto at
4 or near said pits, comprised of various tracks and side tracks and switches used for standing, making up, repairing, and otherwise accommodating its engines, cars, gravel and other trains, and at the time aforesaid was engaged in getting out gravel from said gravel pits and transporting same by means of certain locomotives, engines, and cars, and trains in charge of and operated by its servants and agents, and that said gravel pits, yard, and business at that point was within the State of Kentucky, and said defendant's business at said point was in the charge and under the management of a foreman, to wit, one M. M. Birdsong. And plaintiff further avers that on the day and year aforesaid it was then and there the law of Kentucky, by statute in such cases made and provided, that "if the life of any person or persons is lost or destroyed by wilful neglect of another person or persons, company or companies, corporation or corporations, their agents or
5 servants, then the widow, heir, or personal representatives of the deceased shall have the right to sue such person or persons, company or companies, corporation or corporations, and recover punitive damage for the loss or destruction of the life aforesaid." Plaintiff further avers that said defendant was on the day and year aforesaid and in said yard, near said gravel pits aforesaid, possessed of a certain freight car, standing on one of its said tracks therein, out of and needing repair and without any locomotive engine attached thereto, and it was made the duty of Alfred William Brown, usually known as A. W. Brown, then and there in the employment of said defendant in the capacity of car-repairer, to immediately repair said car, for which purpose it became necessary for him to be underneath the same on said track, to which
6 end it became and was the duty of defendant to make such provision and regulations for his safety as would have

afforded reasonable protection from the dangers incident to the performance of his duties as such car-repairer, such as providing a secure system of locking the switch leading to the whereabouts of cars while undergoing repairs, or providing a watchman specially charged with the duty to warn the car-repairer of the movements of approaching engines, cars, or trains, or to notify and warn other employees operating other approaching engines, cars, or trains of the position of car-repairer and prevent the dangerous movements of such engines, cars, and trains, or providing and putting up suitable flags or signals to designate the car being repaired, and preserve him from danger, or by providing and observing some other and adequate mode of protection; all of which and any reasonable precaution or precautions plaintiff avers the said de-
7 fendant and its agents and servants, by its and their willful neglect, did omit and fail to do and perform.

And plaintiff further avers that while said A. W. Brown was under said car repairing same, and in the course and performance of his duty, as ordered and required of and by said defendant, and without any fault or negligence on his part, a certain locomotive engine of the defendant was willfully and negligently moved by its engineer, a servant of said defendant, along and upon said track in said yard and against said car undergoing repair as aforesaid, and said car was suddenly and violently moved and driven and ran upon and against him, said A. W. Brown, by means of which he was injured, hurt, bruised, wounded, and crushed upon his head, limbs, chest, and divers parts of his body, by reason whereof he underwent great mental and physical pain and suffering, and lingered and languished, and from which he did afterwards die on, to wit, said 29th day of July, 1892, and by reason whereof he
8 was greatly damaged in mind and body, and prevented from thereafter performing and transacting his proper affairs and business. And plaintiff further avers that at the time of the infliction of said injuries and grievances to and upon said A. W. Brown she, the plaintiff, was then and there his wife and until his death, and that she was at the date of the bringing of this suit and still is his widow; that said A. W. Brown was at the time of the infliction of said injuries in vigerous manhood, age, to wit, between forty and forty-one years, and with, to wit, many years expectancy of life before him; that he was of large capacity for earning wages and money and a kind and affectionate husband. And plaintiff avers that the life of the said A. W. Brown, her husband, was lost and destroyed by the willful neglect of the defendant, its agents and servants, in the following particulars and respects, to wit:

9 1st. Of the engineer on the aforesaid moving engine in willfully neglecting to ascertain the presence of said A. W. Brown under said car.

2d. Of the other servants and agents of the defendant in connection with the aforesaid moving engine — willfully neglecting to ascertain the presence of said A. W. Brown, the car-repairer, under said car.

3d. Of the foreman, M. M. Birdsong, in failing to warn said A. W.

Brown of the approaching engine or the engineer of the presence of said Brown under the car.

4th. Of the defendant, its servants and agents, in willfully neglecting to provide a safe system of lock-switches to protect said car-repairer.

5th. Of defendant, its servants and agents, in willfully neglecting to provide and have on duty a watchman to give suitable warnings on the premises.

6th. Of defendant, its servant- and agents, in willfully neglecting to provide and put out suitable — or signals to give warnings in the premises.

7th. Of said defendant, its servants and agents, in willfully neglecting and failing to furnish suitable flags and signals, watchman, or appliances to conform to any regulation it may have had or theretofore promulgated for use at said repair yard; and,

8th. Of defendant, its servants and agents, in willfully neglecting to provide any adequate regulation or warning for the protection of said car-repairer at the time of the aforesaid injuries and grievances.

Wherefore plaintiff sues for twenty thousand dollars as damages allowed by said law of Kentucky for the loss and destruction of the life of her said husband as aforesaid, and asks a jury to try the issues that may be joined in this cause.

E. L. BULLOCK,
HAYNES & HAYS,
Att'ys for Plaintiff.

Application for Removal.

MARY G. BROWN
vs.
I. C. R. R. Co. } 1091, J. D. Application for Removal.

The defendant, having filed *his* petition, with bond, asking for the removal of the case to the circuit court of the United States for the western district of Tennessee, the eastern division thereof, *and* now comes, this 18th day of September, 1893, the 1st day of September term, 1893, of this court, — asks the court for an order for said removal.

SATURDAY MORNING—8 o'clock.

Court opened pursuant to adjournment—present and presiding, Hon. L. S. Woods, judge—when the following proceedings were had, to wit:

Order of Removal.

MARY G. BROWN
vs.
I. C. R. R. Co. } 1091, J. D. Damage. Order of Removal.

On the pleadings and proceedings herein by the defendant, The Illinois Central Railroad Company, under the provisions of the act

of Congress of the United States, and on motion of attorneys for defendant, it is ordered that the security offered by the said defendant, The Illinois Central Railroad Company, be approved, and that the State court proceed no further in this cause, and that this case be removed into the circuit court of the United States for the
12 western district of Tennessee, the eastern division thereof, at Jackson, Tennessee.

Pending in the Circuit Court of Madison County.

MARY G. BROWN
vs.
THE ILLINOIS CENTRAL RAILROAD CO.

To the Hon. L. S. Woods, judge, etc., of the 11th judicial circuit of the State of Tennessee, holding the circuit court at Jackson for the county of Madison, Tennessee:

Your petitioner, The Illinois Central Railroad Co., would respectfully state that it is a corporation chartered under and by the statute and laws of the State of Illinois, and is now and was prior to and on the 5th of October, 1892, a citizen of the State of Illinois; that the plaintiff, Mary G. Brown, is now and was on the 5th day of October, 1892, the time of commencing this suit, a citizen of the State of Tennessee.

Your petitioner would state that on the 5th of October, 1892, the plaintiff, Mary G. Brown, commenced her suit by the summons from your honor's court, which was served on
13 your petitioner the 5th of October, 1892, claiming therein twenty thousand dollars damages against your petitioner; would further state that no further steps were taken in said cause until the 8th of July, 1893, when the plaintiff, by her attorneys, filed with the clerk, J. D. Newton, of your honor's court a declaration setting forth the cause of her complaint; that said declaration was filed out of term time without authority or statute; that the defendant was not, under the statute or the rule of the State of Tennessee, required to answer or defend said declaration out of term time, but would have at least two days, if not five, of the next circuit court in which to file answer or plead to said declaration. It states further that the time has not yet elapsed, *by which*, under the laws and rules of the State of Tennessee and of the courts, in which your petitioner is compelled to plead to or answer the declaration. Your petitioner would further state that the matter in
14 dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, the amount claimed of the defendant by the plaintiff being twenty thousand dollars.

Your petitioner would state that the next term of the circuit court of Madison county commences on the third Monday of September, 1893, and that the declaration was filed when no court was being held and no term of court existing, but during the final adjournment of a prior term of court and during the interim between said final adjournment and commencement of the September

term of said court. Your petitioner desires to remove this suit into the circuit court of the United States to be held at Jackson, Madison county, Tennessee, being the eastern division of the western district of Tennessee, in pursuance to the acts of Congress in that behalf provided, and it hereby offers its bond, executed by it and McCorry & Bond as sureties, in the penal sum of five hundred dollars
15 ($500), conditioned as by said acts of Congress required.

Your petitioner therefore prays that said bond may be accepted as good and sufficient according to the said acts of Congress, and that the said suit may be removed into the next circuit court of the United States to be held at Jackson, Tenn., in and for the eastern division of the western district of Tennessee in pursuance to the acts of Congress in such case made and provided, and that no further proceedings may be had therein in this court; and your petitioner will ever pray.

ILLINOIS CENTRAL RAILROAD COMPANY,
By McCORRY AND BOND, *Att'ys.*
McCORRY & BOND, *Attorneys.*

STATE OF TENNESSEE, }
Madison County. }

C. G. Bond, agent and attorney of the foregoing petitioner, being duly sworn, says that the facts in the foregoing petition are true.

C. G. BOND.

Sworn and subscribed to before me this the 16th day of September, 1893.

J. D. NEWTON, *Clerk.*

16 Pending in the Circuit Court of Madison County.

MARY G. BROWN }
vs. }
THE ILLINOIS CENTRAL RAILROAD CO. }

Know all men by these presents that we, The Illinois Central Railroad Co., principal, and McCorry and Bond, sureties, are held and firmly bound unto Mary G. Brown in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, by these presents.

The condition of this obligation is such that if the defendant, The Illinois Central Railroad Co., shall enter and file or cause to be entered and filed in the next circuit court of the United States to be holden at Jackson, Tenn., for the eastern division of the western district thereof, on the first day of its next session, copies of all process, pleadings, and other proceedings in the suit of Mary G. Brown against The Illinois Central Railroad Co., now pend-
17 ing in the circuit court of Madison county, Tenn., the 11th judicial district of Tennessee, wherein said Mary G. Brown

is plaintiff and said Illinois Central Railroad Co. is defendant, and shall do such other appropriate acts as by the acts of Congress in that behalf are required to be done upon the removal of such suit from said State court into the United States circuit court, then this obligation to be void; otherwise to remain in full force.

ILLINOIS CENTRAL RAILROAD CO.,
By McCORRY & BOND, *Att'ys.*
McCORRY & BOND. *Sureties.*

Approved.
J. D. NEWTON, *Clerk.*

September 16th, 1893.

STATE OF TENNESSEE, }
Madison County. }

I, J. D. Newton, clerk of the circuit court of said county and State, do certify that the foregoing transcript is a true and perfect copy of all the records and proceedings had in the above-styled cause as appears of record and on file in my office.

Witness my hand and seal of said court, at office, in Jack-
17½ son, Tennessee, this October 9th, 1893.

[L. S.] J. D. NEWTON, *Clerk.*

18 UNITED STATES OF AMERICA, }
Eastern Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1893, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 23 day of October, A. D. 1893, in the following cause, to wit:

MARY G. BROWN, Plaintiff,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } No. 122.

This day comes the said defendant, by its attorneys, and files herein a transcript on the removal of this suit to this court from the circuit court of Madison county, Tennessee, and the clerk will docket the same according to the court's practice.

[Endorsed:] No. 122. Circuit court of the United States, eastern division, western district of Tennessee. Mary G. Brown *vs.* Ill. Cent'l R. R. Co. Order of court. Entered and filed 23d day of Octo., A. D. 1893. John B. Clough, clerk, by —— ——, deputy.

19 *Plea. Filed Oct. 23d, 1893.*

Circuit Court of the United States, Eastern Division, Western District of Tennessee.

MARY G. BROWN
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

Comes now the defendant, by attorneys, and pleads:

1st. It is not guilty of the wrongs and injuries as set forth in the plaintiff's declaration.

2d. And, for further plea, says if plaintiff's husband was killed it was by the acts of those who were not vice-principals and for whose faults it is not liable.

3d. And, for further plea, says if plaintiff's husband was killed it was by and through his own fault and negligence, and defendant is not liable.

4th. And, for further plea, says if plaintiff's husband was killed it was by and through his negligence contributing to the accident; wherefore defendant is not liable.

McCORRY & BOND, *Attorneys.*

20 *Issue Joined. Filed Oct. 26, 1893.*

Circuit Court of the United States, Eastern Division, Western District of Tennessee.

MARY G. BROWN
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

The plaintiff, by her attorneys, joins issue on the several pleas pleaded by the defendant.

HAYNES & HAYS,
Attorneys for Plaintiff.

21 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1893, at the United States courthouse, in the city of Jackson, in said district, on, to wit, the 31st day of October, A. D. 1893, in the following cause, to wit:

MARY G. BROWN, Plaintiff,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } No. 122.

This case came on to be heard upon the motion of plaintiff to remand this case to the circuit court of Madison county, Tennessee,

upon the ground that defendant's petition for removal was not filed within the first five days, as prescribed by the statutes of Tennessee in such cases made and provided; which motion, being understood by the court, is allowed and sustained. It is therefore considered by the court that this case be, and it is hereby, remanded to said circuit court of Madison county, Tennessee, to be there pro-
22 ceeded with in the same plight and condition as before its attempted removal to this court. It is further considered that plaintiff recover of defendant and of McCorry & Bond, its sureties on its cost bond, the costs thereof, for which let execution issue. It is further considered that the clerk will certify the action of this court in this behalf to said court.

[Endorsed:] No. 122. Circuit court of the United States, eastern division, western district of Tennessee. Mary G. Brown *vs.* Ill. Cent'l R. R. Co. Order of court. Entered and filed 31st day of Octo., A. D. 1893. John B. Clough, clerk, by —— ——, deputy.

23 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its October term, A. D. 1893, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 2d day of January, A. D. 1894, in the following cause, to wit:

MARY G. BROWN, Plaintiff,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } No. 122.

This day came again the defendant, by its attorneys, and tendered to the court its bill of exceptions herein to the ruling of the court remanding this suit from this court to the circuit court of Madison county, Tennessee, which, being duly signed, sealed, and allowed, is hereby ordered to be made a part of the record of this suit.

[Endorsed:] No. 122. Circuit court of the United States, eastern district of Tennessee. Mary G. Brown *vs.* Ill. Cent. R. R. Co. Order of court. Entered and filed 2d day of Jan'ry, A. D. 1894. John B. Clough, clerk, by —— ——, deputy.

24 *Bill of Exceptions. Filed January 2d, 1894.*

Circuit Court of the United States, Eastern Division, Western District of Tennessee.

MARY G. BROWN
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

The following proceedings were had in this case: The defendant on the first day of the term filed a copy of the record and proceedings from the circuit court of Madison country, Tennessee.

The transcript of the record being in compliance with the act of Congress for the removal of causes from State to U. S. circuit courts, and the said transcript was on said first day of the term filed.

Thereupon came the plaintiff, by attorneys, and moved to remand the case to the State court, which motion was entered of record, and which motion being considered by the court was sustained and the case ordered remanded; to which ruling of the court remanding the case to the circuit court of Madison county, Tennessee, the defendant, by counsel, excepted, and said exceptions entered of record. Defendant tenders this its bill of exceptions to the action of the court in remanding the case to the State circuit court, and thereby sustaining the plaintiff's motion, and the same is
25 allowed, and it is now signed, sealed, and made a part of this record.

Jackson, Tennessee, January 2d, A. D. 1894.

E. S. HAMMOND, *Judge*.

26 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its October term, A. D. 1893, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 3d day of January, A. D. 1894, in the following cause, to wit:

MARY G. BROWN, Plaintiff,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } No. 122.

This day came again the defendant to this suit, by its attorneys, and asks leave to file herein its assignment of errors to the ruling of the court remanding this suit to the circuit court of Madison county, Tennessee, from this court, which leave is hereby granted, and the said assignment of errors is now accordingly filed.

[Endorsed:] No. 122. Circuit court of the United States, eastern district of Tennessee. Mary G. Brown *vs.* Ill. Cent. R. R. Co. Order of court. Entered and filed 3d day of Jan'y, A. D. 1894. John B. Clough, clerk, by —— ——, deputy.

27 *Assignment of Errors. Filed January 3d*, 1894.

Circuit Court of the United States, Eastern Division, Western District of Tennessee.

MARY G. BROWN
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

The defendant, The Illinois Central Railroad Company, comes and assigns the following as errors in the action of the court sus-

taining the motion of the plaintiff to remand this case to the circuit court of Madison county, Tennessee:

1st. Because, as appears by the petition in this case of defendant to remove the case from the circuit court of Madison county, Tennessee, on the first day of the term, at which the plaintiff filed her declaration, and at a time before defendant was required by the laws of the State of Tennessee, where the case was pending, or rule of the State court in which the suit was brought and pending, to answer or plead to the declaration or complaint of the plaintiff.

2d. Because the declaration having been filed and the petition to remove was filed the first day of the term, at which the declaration was filed, that, under the statutes of Tennessee and construc-
28 tion of the same by the State court, the defendant had three days in which to answer or plead to said declaration; yet it filed its petition to remove on the first day and before the time had expired in which it was required to plead or answer.

Therefore its petition was in time, and it was error in the judge of the U. S. circuit court to sustain the plaintiff's motion to remand.

All of which this defendant assigns as error and asks a reversal of the ruling of the court.

McCORRY & BOND,
Attorneys for Illinois Central Railroad Co.

29 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its October term, A. D. 1892, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 4th day of January, A. D. 1894, in the following cause, to wit:

MARY G. BROWN, Plaintiff,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } No. 122.

Came again the defendant herein, by its attorneys, and files in this suit its petition for a writ of error to the Supreme Court of the United States; which petition is hereby granted upon defendant's giving the usual bond with approved securities.

[Endorsed:] No. 122. Circuit court of the United States, eastern district of Tennessee. Mary G. Brown *vs.* Ill. Cent. R. R. Co. Order of court. Entered and filed 4th day of Jan'y, A. D. 1894. John B. Clough, clerk, by —— ——, deputy.

30 *Petition for a Writ of Error. Filed January* 4, 1894.

Circuit Court of the United States, Western District of Tennessee.

MARY G. BROWN
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

To the honorable the judges of the circuit court of the United States for the eastern division of the western district of Tennessee:

Your petitioner, The Illinois Central Railroad Company, defendant in the above-entitled suit, by its attorneys, now comes and prays the court for a writ of error in the above-entitled suit to the Supreme Court of the United States, sitting at Washington, in the District of Columbia, to review judgment and orders entered in said cause remanding the same from said court to the circuit court of Madison county, Tennessee, from which last-named court said suit was removed to said circuit court of the United States, and said defendant files this its petition in such behalf.

McCORRY & BOND,
Attorneys for said Company.

31 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its October term, A. D. 1893, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 5th day of January, A. D. 1894, in the following cause, to wit:

MARY G. BROWN, Plaintiff,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } No. 122.

This day came again the said defendant, by its attorneys, and presents and files herein its writ of error bond in the penal sum of five hundred dollars, the same having been duly approved as required by law.

[Endorsed:] No. 122. Circuit court of the United States, eastern district of Tennessee. Mary G. Brown *vs.* Ill. Cent. R. R. Co. Order of court. Entered and filed 5th day of Jan'y, A. D. 1894. John B. Clough, clerk, by —— ——, deputy.

32 *Writ of Error Bond. Filed 5th Day of Jan'y, 1894.*

Circuit Court of the United States, Eastern Division, Western District of Tennessee.

MARY G. BROWN
vs.
ILLINOIS CENTRAL RAILROAD CO. } No. 122.

Know all men by these presents that we, The Illinois Central Railroad Company, as principal, and C. G. Bond and H. W. McCorry, as sureties, are hereby held and firmly bound unto Mary G. Brown in the full and just sum of five hundred dollars, well and truly to be paid to her, her executors or administrators; to the payment of which, well and truly to be made, we hereby bind ourselves, jointly and severally, and our and each of our heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals, signed, and dated at Jackson, Tennessee, this fifth day of January, A. D. 1894.

The condition of this obligation is such that whereas the above-named Illinois Central Railroad Company, defendant in the above-entitled suit, has prosecuted a writ of error to the Supreme Court of the United States, sitting at Washington, in the District of Columbia, to reverse the judgment rendered against it in favor of said plaintiff, Mary G. Brown, in the above-entitled suit by the
33 circuit court of the United States for the eastern division of the western district of Tennessee:

Now, therefore, if the said Illinois Central Railroad Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise remain in full force and effect.

ILLINOIS CENTRAL RAILROAD COMPANY, [SEAL.]
By McCORRY AND BOND,
Its Attorneys.
C. G. BOND. [SEAL.]
H. W. McCORRY. [SEAL.]

This bond is hereby approved, at said Jackson, on the date thereof.

E. S. HAMMOND,
U. S. District Judge.

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the western district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said circuit court, before

you, between Mary G. Brown, plaintiff, and The Illinois Central Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Illinois Central Railroad Company, as by complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the third day of February, 1894, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Jackson, this fifth day of January, A. D. 189–, and 118th of American Independence.

{ Seal of the Circuit Court of the United States for the District of Tennessee. }

JOHN B. CLOUGH, *Clerk.*
——— ———, *D. C.*

[Endorsed:] No. 122. Circuit court of the United States, western district of Tennessee, *w*estern division. Illinois Central R. R. Co., plaintiff in error, *vs.* Mary G. Brown, defendant in error. Writ of error. Issued the 5th day of January, A. D. 1894. J. B. Clough, clerk.

35 United States of America to Mary G. Brown, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the third day in February, 1894, persuant to a writ of error filed in the clerk's office of the circuit court of the United States for the circuit and western district of Tennessee, wherein The Illinois Central Railroad Company is plaintiff and you are defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable E. S. Hammond, judge of the district court of the United States for the western district of Tennessee, this 5th day of January, A. D. 1894.

E. S. HAMMOND, *Judge.*

[Endorsed:] No. 122. Circuit court of the United States, western district of Tennessee. The Illinois Central Railroad Company, plaintiff in error, *vs.* Mary G. Brown, defendant in error. Citation. Filed the 5th day of January, A. D. 1894. John B. Clough, clerk.

36 Circuit — U. S., Jackson, Tenn.

MARY G. BROWN
vs.
ILLINOIS CENTRAL R. R. Co. } 122.

H. W. McCorry. Chester G. Bond.

Office of McCorry & Bond, attorneys-at-law, 211 East Baltimore street.

JACKSON, TENN., *Jan'y* 17, 1894.

As attorneys of record of Mrs. Mary G. Brown, we accept service of citation and writ of error to the Supreme Court of U. S. in the above-entitled case.

HAYNES & HAYS,
Att'ys for Plaintiff.

Filed January 17, 1894.

J. B. CLOUGH, *Clerk.*

37 THE UNITED STATES OF AMERICA,
Sixth Judicial Circuit, Western District of Tennessee.

I, John B. Clough, clerk of the circuit court of the United States for the eastern division of said western district of Tennessee, do hereby certify that the papers hereto attached are a full, true, perfect, and correct copy of the original record, as well as the original writ of error and citation & acknowledgment of service in said court, as the same now appears of record and upon the files in my office in the following cause, to wit:

MARY G. BROWN
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } No. 122.

In testimony whereof I have hereunto written my name and affixed the seal of said court, at my office in the city of Jackson, Tennessee, this 22d day of January, A. D. 1894, and of the Independence of the United States the 118th year.

Seal of the Circuit Court of the United States for the District of Tennessee.

JOHN B. CLOUGH, *Clerk.*

Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing

certificate, is, and was at the date of the same, clerk of said court, and that his attestation is in due form.

____ ____,

Judge of the District Courts of the United States for the District Aforesaid.

[Endorsed:] No. 122. Circuit court of the United States, western district of Tennessee, eastern division. Mary G. Brown *vs.* The Illinois Central Railroad Company.

Endorsed on cover: Case No. 15,495. W. Tennessee C. C. U. S. Term No., 1111. The Illinois Central Railroad Company, plaintiff in error, *vs.* Mary G. Brown. Filed January 31st, 1894.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 632.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

MARY G. BROWN,
DEFENDANT IN ERROR.

BRIEF OF COUNSEL FOR DEFENDANT IN ERROR, ON MOTION TO DISMISS, AND UNITED THEREWITH HER MOTION TO AFFIRM.

Defendant in error has served the counsel of record for plaintiff in error with notice of her motion (hereinafter set out at length) together with a copy of her brief, or argument.

The motions, of which notice has been given, are as follows:

In the Supreme Court of the United States.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
PLAINTIFF IN ERROR,
vs.
MARY G. BROWN.
} No. 632.

In Error to the Circuit Court of the United States for the Western District of Tennessee.

The motion of Defendant in Error to Dismiss the Writ of Error, and United therewith her motion to Affirm the Judgment remanding to the State Court.

The Defendant in error, Mary G. Brown, pursuant to notice to counsel of record for plaintiff in error, moves the Court to dismiss the writ of error sued out in this cause January 5, 1894, upon the petition of the Illinois Central Railroad Company, shown at pages 12, 13, and 14 of the printed record, on the following grounds, to-wit:

1. The application for removal of this cause from the Circuit Court of the State of Tennessee, for Madison County, at Jackson, to the Circuit Court of the United States for the Western District of Tennessee, on to-wit the 18th day of September, the first day of the September term, 1893, of said Court, by petition verified Sept. 16, 1893, as shown at pages 4, 5 and 6 of the printed record, and on the grounds therein set forth, that the controversy is wholly between citizens of different States and the matter in dispute exceeds, exclusive of costs, the sum of two thousand dollars, came too late, in this—that the declaration was filed July 8, 1893; and said defendant did not file said petition in the State Court at the time, or any time before, it was required by the laws of the State of Tennessee, to answer or plead to the declaration.

2. The petition was not filed within the first five days of the January term, 1893. of said State Court, to which the summons was returnable, and which term began the second Monday in January, 1893.

3. The judgment remanding to the State Court is not final.

4. And united with the foregoing motion to dismiss the said writ of error, the defendant in error, Mary G. Brown, further moves the Court to affirm the judgment of the Circuit Court of the United States for the Western District of Tennessee (which judgmentis copied into the printed record at pages 8 and 9), on the following distinct grounds:

1. The writ of error was taken for delay only.

2. The question on which the jurisdiction depends is so frivolous as not to need further argument; and

3. The question of law the Court is asked to consider has been already settled in the Supreme Court of the United States.

STATEMENT OF THE CASE.

The action was begun Oct. 5, 1892, by summons returnable to the 2nd Monday of January, 1893—the 9th day of said month.

Record p. 1.

The declaration was filed July 8, 1893. Its sufficiency is not in question.

Record p. 2.

The application for removal was made in the Circuit Court of Madison County the 18th day of September, 1893, by petition sworn to on September 16, 1893, more than eight months after the expiration the first five days of the return term of the original summons; and more than two months after the filing of the declaration.

See pp. 4, 5, 6, and 7.

The Circuit Court of the United States remanded the cause to the State Court by order made Oct. 31, 1893.

Record pp. 8 and 9.

The defendant obtained a writ of error January 5, 1894.

Record pp. 12, 13, and 14.

The plaintiff in error makes two assignments of error, substantially claiming:

1. That the petition was filed the first day of the term at which plaintiff—this defendant in error—filed her declaration, and at a time before defendant was required to answer or plead.

2. Because the declaration having been filed and the petition to remove was filed the first day of the term, the defendant had three days in which to answer or plead.

See assignment at length, Record pp. 10 and 11.

BRIEF FOR DEFENDANT IN ERROR.

The Statutes of Tennessee provide as follows:

§ 3,601. All pleadings shall be endorsed by the clerk when filed with the true date, and for want of such endorsement may be rejected by the court on motion, unless sufficient cause be shown.

§ 5,010. The declaration of the plaintiff shall be filed within the first three days of the term to which the writ is returnable; otherwise the suit may, upon motion of the defendant, be dismissed at plaintiff's cost.

§ 5,011. The defendant shall appear and demur or plead within the first two days after the time allotted for filing the declaration, otherwise the plaintiff may have judgment by default.

§ 5,012. The plaintiff and defendant shall, within the first two days after each subsequent step taken by the other in making up an issue, demur or plead thereto, on penalty of having the suit dismissed, or judgment taken by default, according as the failure is by plaintiff or defendant.

§ 5,013. The court may, however, enlarge the time for pleading, upon application of either party, in proper cases, or excuse the failure to plead within the time prescribed, upon good cause shown.

Milliken & Vetrees Code of Tennessee, § 3,601 and §§ 5,010 and 5,013.

Thompson & Stegar Code, § 2,895 and §§ 4,238 to 4,241.

The two assignment of error are based on incorrect statements of fact, in that they both ASSUME the DECLARATION and PETITION to REMOVE were filed on the same day; to-wit, the "first day of the term at which

the declaration was filed." Whereas in truth and in fact the declaration was filed July 8th, 1893, properly ENTITLED, of the May term, 1893, of the Court, which had begun the 3rd Monday of May, over two months prior to the time the September term was to begin, on the 3rd Monday, or 18th day of September; while the petition was not drawn and verified till the 16th day of September; and on the 18th (the first day of the September term) was presented to the Court, the bond approved by the Court and the order of removal was made.

Filing and title of Declaration, Rec. pp. 2, 3, 4.

Presentation of Petition, Rec. pp. 4, 5, 6, 7.

Of course the assignments of error do not raise the question of law under consideration on the facts, unless the actual filing of the declaration on July 8th was in law a filing on the 18th day of September.

The Statutes of Tennessee, above quoted, do not bear the construction intimated in the assignments.

Under the above cited sections of the Code, §§3,601, 5,010, 5,011, 5,012, 5,013, and the practice growing out of same, as universally recognized in our State Circuit Courts, and sustained by the decisions of the Supreme Court, the pleadings are made up in the Clerk's office, by merely filing with the Clerk, who endorses the true date of the filing.

Judge Carruthers, in his history of a law suit, our standard work of practice, under the Tennessee Code, says: "The filing of a declaration or any other pleading simply consists of depositing it with the Clerk, who is to endorse upon it the day on which it is filed."

Carruthers' His. L. Suit, § 97, p. 46.

And again, "Should the appearance term—sometimes called the issue term, sometimes the pleading term—adjourn before the pleadings have advanced to issue, they still go on, as we have seen, in the Clerk's office. They relate to the issue term, and if formally correct every pleading would be entitled as of that term."

Carruthers' His. L. Suit, § 299, p. 183.

In Byrd vs. Bank, the Supreme Court of Tennessee held: "The length of the term is unimportant, so far as respects the obligation of the parties to make up their pleadings within the time fixed by the

JACKSON, TENN., January,.....1895.

Service of notice of the motions of Mary G. Brown, Defendant in Error, to dismiss the writ of error of the Illinois Central Railroad Company, and united therewith her motion to affirm the judgment of the Circuit Court of the United States for the Western District of Tenuessee, accompanied with a copy of said motions, and her printed Brief or Argument as hereinbefore set out and printed, to which reference is here made for particulars, is hereby accepted that said motion will be made January, 1895, one of the days of the October term, 1894, of the Supreme Court of the United States.

Attorney of Record for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 632.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

MARY G. BROWN,
DEFENDANT IN ERROR.

Brief of Counsel for Plaintiff in Error, on motion of Counsel for Defendant in Error to dismiss the case or appeal, and to affirm the judgment of the Circuit Court remanding said case to the State Circuit Court.

The motion of defendant in error to dismiss and affirm are:

1. The application for removal by plaintiff in error from the Circuit Court, Madison County, Tennessee, to U. S. Circuit Court for the Eastern Division of the Western District of Tennessee, to-wit: 18th of September, the first day of the September Term, 1893, came too late. The declaration was filed July 8, 1893, and defendant did not file the petition to remove in the State Court at the time or any time before it was required by the laws of Tennessee, to answer or plead to the declaration.

2. The petition was not filed within the first five days after the January Term, 1893, of said State Court, to which the summons was returnable, and which term began the 2nd Monday in January, 1893.

3. The judgment remanding to the State Court is not final.

4. United with the motion to dismiss the writ of error,

tiff had the first three days to file his declaration and defendant two days thereafter to file his plea.

Bird v. Bank, 2 Swan (32 Tenn.) 43-46.

The 5 *Sneed case* was where suit was brought plaintiff's attorney failed to attend Court and file his declaration, because the Judge did not attend at the next term, after the expiration of three days defendant moved to dismiss the suit for want of a declaration, which motion was allowed. The Court holding: That "it was the duty of the plaintiff to have filed his declaration within the first three days of the January Term. This he "could have done in the Clerk's office though the Judge did not "attend and there was no Court at that time. But he failed to "do this; and did not attempt to file his declaration until the "three first days of the next term had expired."

Morrow v. Malone, 5 Sneed (37 Tenn.) 642

This was based on Acts of Tennessee, 1794, Ch. 1, Section 26—1809, Ch. 49, Section 3—Code of Tenn, Miliken & Vertres' Compilation, Section 4992.

Where it is provided that if the Judge fails to appear and hold Court, the Clerk may open and adjourn for the first three days of *Court.*

It *is not* applicable to this case.

The statute of Tennessee provides, that the declaration shall be filed within the first three days of term to which the writ is returnable.

Code (M. & V.) Section 5010.

The defendant shall file his pleadings within the first two days afterwards.

Code (M. & V.) 5011.

Under the statutes of Tennessee and the facts as shown by the petition when was the issue term? When was defendant at fault, and when could the plaintiff have taken judgment for want of a plea? How has the Supreme Court of Tennessee construed these statutes?

When at the return time of process, plaintiff on his application was allowed until the next term to file his declaration. The effect was to make said next term the return time so far as de-

fendant was concerned. The trial term being the one next after that at which the issue is made up.

Lucas v. Sevier, 1 Tennessee, page 19.
Elliott v. Solz Kotter, 4 Sneed (36 Tenn) 582.

And the Court answering the question, what is the appearance term? says: The plaintiff having delayed to file his declaration at the first term, this of necessity had the effect of making the term at which he did file his declaration the appearance term so far as respects the defendant's right of making defence.

Turner v. Carter, 1 Head (38 Tenn.) 520.

The case of K. C. Ft. S. & M. R. R. Co., v. Daughty, 138 U. S., 298, is relied on by defendant in error as settling the question.

The facts as shown by the record in that case were: Suit commenced 16th August, 1888, against the Kansas City, Fort Scott & Memphis R. R. Co., and the Kansas City, Memphis & Birmingham R. R. Co. Process returnable to the September Term, 1888, which was the 3rd Monday of said month. The regular Terms of the Shelby County, Tennessee, Circuit Court were 3rd Mondays January, March, May, September and November. The declaration was filed at the return term as required by statute. The K. C. M. & B. R. R., filed its plea in time. Three or four terms thereafter the K. C. Ft. S. & M. R. R. Co., to wit: 29th May, 1889, filed its petition to remove the cause. The Circuit Court refused to order the removal. The case went to the State Supreme Court and then to this Court, where it was held that the petition came too late, that four terms of the Circuit Court had elapsed after the declaration had been filed before the petition to remove was filed. This case is not an adjudication of the question presented in the present case.

K. C. Ft. S. & M. R. R. Co., v. Daughty, 138 U. S., 298.

In an opinion by Judge Hammond it was announced, That, where by the State practice a defendant may file pleadings at any time as a matter of right after default, if the opposing party fails to enter judgment, the petition is not too late.

Lockhart v. R. R., 38 Fed. Rep., 274.

And the time allowed for filing the petition may be extended by plaintiff's failure to enter the suit.

Sowles v. Withers, 43 Fed. Rep., 700.

In the present case, the defendant was never in default, the time in which he should plead had not expired. The petition, therefore, was in time and the case should not have been remanded.

H. W. McCORRY.
Attorney for Plaintiff in Error.